IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Revised
Not Restricted
Suitable for Publication

Case No. CR-21-01386

DIRECTOR OF PUBLIC PROSECUTIONS

v

LOUCAS LOUCA

JUDGE:	His Honour Judge Holding
WHERE HELD:	Melbourne
DATE OF HEARING:	28 September 2021
DATE OF SENTENCE:	15 October 2021
CASE MAY BE CITED AS:	*DPP* v *Loucas Louca*
MEDIUM NEUTRAL CITATION:	[2021] VCC 1566

REASONS FOR SENTENCE

Subject:	Criminal Law
Catchwords:	Obtaining financial advantage by deception (two counts) – attempted obtaining financial advantage by deception (one count) – possession of identification information (one count) – contravening a conduct condition of bail (one count) – dealing with property suspected to be proceeds of crime (one count) – sophisticated fraudulent scheme – sale of counterfeit gold bullion – use of internet and false identities – prior criminal history for dishonesty offences – age and ill-health of offender – return of money to the victims – high moral culpability and degree of responsibility.
Legislation Cited:	*Crimes Act 1958* (Vic); *Bail Act 1977* (Vic); *Criminal Procedure Act 2009* (Vic); *Sentencing Act 1991* (Vic); *Confiscation Act 1997* (Vic)
Cases Cited:	*DPP* v *Andreou-Luca* [2016] VCC 195; *Worboyes* v *The Queen* [2021] VSCA 169; *DPP* v *Devey* (No 2) [2021] VSC 121; *R* v *Van Boxtel* (2005) 11 VR 258
Sentence:	2 years and 3 months imprisonment. Non-parole period of 17 months.

APPEARANCES:	Counsel	Solicitors
For the DPP	Mr A Albert	Abbey Hogan, Solicitor for Public Prosecutions

For the Accused	Ms E Austin	Slades & Parsons

HIS HONOUR:

1 Introduction

2 Loucas Louca, you have pleaded guilty to:

- Two charges of Obtaining Financial Advantage By Deception contrary to section 82(1) of the *Crimes Act 1958* (Vic) (maximum penalty – 10 years imprisonment);
- One charge of Attempted Obtaining Financial Advantage By Deception contrary to sections 321M and 82(1) of the *Crimes Act 1958* (Vic) (maximum penalty – 5 years imprisonment);
- One charge of Possession of Identification Information contrary to section 192C of the *Crimes Act 1958* (Vic) (maximum penalty – 3 years imprisonment);
- One summary charge of contravening a conduct condition of bail contrary to section 30A(1) of the *Bail Act 1977* (Vic) (maximum penalty – 30 penalty units or 3 months imprisonment); and
- One summary charge of dealing with property suspected to be proceeds of crime contrary to section 195 of the *Crimes Act 1958* (Vic) (maximum penalty – 2 years imprisonment).

3 Circumstances of the offences

4 The circumstances of your offending are set out in detail in the Summary of Prosecution Opening on Plea dated 22 September 2021.[1] That document should be read in conjunction with these reasons. I act upon the facts as outlined in the opening which were not disputed by you. I will briefly summarise those circumstances.

[1] Exhibit A on the Plea.

5 Over the course of several months in 2019 and 2020, you executed a sophisticated scheme which consisted of selling what you falsely represented to be pure gold bullion to customers on eBay. Your preparation for this scam dates back to early 2018.

6 You are friends with Andrea Montiroli, who was deported from Australia in September 2017. On 18 March 2018, you changed the address on Mr Montiroli's Driver Licence to your own Frankston address. You later renewed Mr Montiroli's licence over the phone.

7 On 4 May 2019, you activated a prepaid SIM card in the name of Marzia Mohseni (I will refer to this as '**the Mohseni telephone number**'). Ms Mohseni is a real person, whose purse and personal cards were stolen in 2019.

8 On 27 September 2019, you created an eBay account in the name of Zhiren Lang, with the username 'zhila_22'. To open this account, you provided the Mohseni telephone number.

9 On 4 October 2019, you purchased a further prepaid SIM card, and subscribed it in the name of Mr Montiroli, with your own Frankston address. (I will refer to this as '**the Montiroli telephone number**').

10 On the same day, on the "zhila_22" eBay account, you advertised 1 oz Argor-Heraeus gold bullions at a price of $1,600.00 each. They were described as "99.9% purity in certified assay." The advertisement included an image of a gold-coloured bullion in sealed packaging and listed the seller's location as Hawthorn, Victoria.

11 Over the subsequent months, you opened several bank accounts in the name of Mr Montiroli, using your Frankston address, and the Montiroli telephone number.

12 **Offending against Mr Budhiraja and Mr Nandala**

13 On 21 November 2019, Mr Priyank Budhiraja saw your eBay advertisement, and called you to discuss buying two gold bullions. You answered the call and identified yourself as 'John'. You explained that you sourced the bullion from a pilot who worked for Swiss Air. You agreed to sell Mr Budhiraja two bullions for $3,000.00 plus $20.00 postage. When Mr Budhiraja requested to pay by PayPal, you said that you preferred bank transfer.

14 On 22 November 2019, you texted Mr Budhiraja requesting that payment be made for the bullion by funds transfer into an ING account in the name of Mr Montiroli ('**Montiroli ING account**'). You then sent two counterfeit bullions to Mr Budhiraja. On 26 November 2019, Mr Budhiraja received the bullions, and did not doubt their authenticity.

15 On 27 November 2021, Mr Budhiraja transferred $3,020.00 into the Montiroli ING account. Mr Budhiraja spoke to a work colleague and friend, Mr Venkata Krisha Nandala, about the bullion. Mr Nandala was interested in purchasing one for himself. Mr Budhiraja wanted to purchase another bullion but was short on funds; Mr Nandala offered to cover the shortfall for Mr Budhiraja.

16 Mr Budhiraja contacted you by telephone and text to ask if you had any additional bullions for sale. You said that you had ten more bullions. You and Mr Budhiraja agreed to a sale of two more bullions for $3,000.00 plus $20.00 postage. You sent two more bullions to Mr Budhiraja. On receiving the bullions, Mr Budhiraja gave one to Mr Nandala. Payment was made to the Montiroli ING account as follows:

- $2,600.00 from Mr Nandala; and
- $400.00 from Mr Budhiraja.

17 The conduct set out in paragraphs 10 to 13 above gives rise to **Charge 1** – obtaining financial advantage by deception.

18 On 9 December 2021, Mr Nandala started having concerns about the authenticity of the bullion because it was so cheap. He spoke to Mr Budhiraja about his concerns. Both men had their gold bullions examined by a registered valuer, who determined that they were comprised of 1.6% gold plating, and were predominantly copper and zinc. The bullion were valued at $20.00 each by the registered valuer.

19 Mr Budhiraja planned to report the scam to the Police, and hoped that he could string the supplier along by ordering more bullions and not paying for them. He texted you, and asked you to call him. On 11 December 2019, you called
Mr Budhiraja, and he ordered three more gold bullions.

20 On 12 December 2019, Mr Budhiraja received the three bullions, but did not open the parcel. After this, you messaged Mr Budhiraja asking whether he had received the bullions, and he confirmed that he had. You asked that Mr Budhiraja make payment by transfer to a Bendigo Bank account in Montiroli's name. He made various excuses to delay payment.

21 On 31 December 2019, Mr Budhiraja made a complaint to eBay in relation to the zhila_22 account, and to the Police. On 13 January 2020, you texted Mr Budhiraja following up on the outstanding payment for the three gold bullions.

22 The conduct set out in paragraphs 15 to 18 above gives rise to **Charge 2** – attempt to obtain financial advantage by deception.

23 You then proceeded to prepare for further offending.

24 On 13 May 2020, you used the messaging application WeChat to message a person by the name of 'Ntasha' from the Chinese wholesale company DHgate. The thrust of your conversation was that you sought to buy counterfeit gold bullions for $20.00 apiece. You bought 15 bullions for a total of $300.00, and arranged for them to be delivered to your address in Camberwell (a different address to your Frankston address referred to in paragraph 9). You requested that 'Ntasha' did not "issue invoice details," and asked her not to say what the payment was for in future.

25 On 25 May 2020, you purchased an Optus SIM card and registered it in the name of 'Ann Desvystun' of a Bendigo address ('**the Desvystun telephone number**'). You also created an email account in the name of 'Ann Desvystun', an eBay account with the username 'kendi-28', and a PayPal account in the name of your fiancé Anna Svystun ('**Anna Svystun PayPal account**'). You linked this PayPal account to a Credit Union Australia account that you had created in the name of Montiroli in January 2020 ('**the Montiroli Credit Union account**').

26 On 28 June 2020, you created a further two accounts in the name of Montiroli on the Credit Union Australia website. You linked these accounts to the Montiroli Credit Union account.

27 **Offending against Mr Counsel**

28 On 6 July 2020, you advertised 1 oz gold bullions for sale on the kendi-28 eBay account, for $2,700.00 each. The advertisement represented that the bullions were certified Argo-Heraeus gold bullion of 99.99% purity.

29 On 7 July 2020, Phillip Counsel saw your advertisement. He was attracted by the price and immediately agreed to purchase a bullion. He sent you a private message asking whether any more were available. You responded as 'Miss Anna', and you began communicating about your purported mutual

interest in gold. Mr Counsel arranged to purchase an additional bullion. He then paid $5,433.40 for the two bullions by means of a PayPal payment into the Montiroli Credit Union account.

30 After receiving payment, you sent the two fake bullions to Mr Counsel, with the sender named as 'Miss Ann' with a Bendigo address.

31 On 11 July 2020, Mr Counsel received the parcel, and believed that the bullions were genuine. He continued to discuss gold with you via private message and email. He explained to you that he was investing in gold because he had lost his house and possessions in the Mallacoota bushfires, and had recently received the insurance payout for that circumstance. You feigned sympathy for Mr Counsel, maintaining the Miss Anna identity. On one instance, you sent the following message to Mr Counsel:

32 *Hello Phillip*

33 *It's so sad to hear you lost everything from the fires.*

34 *I have accepted your offer by the way*

35 *Sorry to hear you lost everything.*

36 *Hopefully everything will be ok in future and main thing you are still live.*

37 *Thank you for your business.*

38 *I will try and post it today for you.*

39 *Regards*

40 *Miss Anna*

41 *God be with you.*

42 Mr Counsel purchased two gold bullions on three further occasions. Over the three occasions, he made a total payment of $15,785.50 to the Anna Svystun PayPal account, particularised as follows:

- $5,400.00 on 16 July 2020;

- $2,599.70 and $2,616.70 on 17 July 2020; and
- $2,552.70 and $2,599.70 on 18 July 2020.

43 You sent Mr Counsel the bullion. Following the purchase on 18 July 2020, you sent Mr Counsel a private message proposing that any future purchases be made via direct bank transfer to avoid PayPal and eBay fees. Mr Counsel agreed.

44 On 19 July 2020, Mr Counsel arranged to purchase a further eight bullions. You requested that payment be made by direct bank transfer to one of the Montiroli Credit Union accounts. Mr Counsel transferred $20,000.00 (particularised as two transactions of $7,500.00 and $12,500.00) to that account.

45 On 21 July, you offered to reverse three of the first four eBay purchases that Mr Counsel had made payment for via PayPal. The fourth payment of $20,000.00 had already been processed and could not be reversed. You explained that by reversing the transaction, the original funds would be deposited back into Mr Counsel's account, and that Mr Counsel would then be able to transfer the payment directly to 'Miss Anna's bank account' without PayPal and eBay fees. Mr Counsel agreed, and you reversed the three original transactions. A refund of $15,785.00 was deposited into Mr Counsel's bank account.

46 Mr Counsel ordered another bullion, and transferred $17.400.00 into the Montiroli bank account. This transaction covered payment for the three refunded transactions, and the most recent order for another bullion.

47 Mr Counsel then made an additional purchase of two further bullions. He transferred $5,000.00 into the Montiroli bank account.

48 Mr Counsel then became interested in purchasing 1 kg of gold from 'Miss Anna', and he made enquiries to that end.

49 On 24 July 2020, Mr Counsel received a telephone call from a woman purporting to be 'Miss Anna' (on the Desvystun telephone number). The woman told Mr Counsel that she would have to talk to her father about such a large purchase. The phone was handed to you. You identified yourself as 'Andy'. You told Mr Counsel that because he was a good customer, you would sell him 1 kg of gold (32 bullions). A price of $73,600.00 was agreed. Mr Counsel said that he would not be able to make such a large payment for a few days. Until he could do so, Mr Counsel ordered another gold bullion for $2,500.00 and silver ingots for $1,800.00.

50 On 25 July 2020, Mr Counsel transferred $4,300.00 into the Montiroli bank account. A few days later, he received, from you, a counterfeit gold bullion, and genuine silver ingots.

51 On 27 July 2020, Mr Counsel transferred $73,600.00 for 1 kg of gold into the Montiroli bank account. On receiving the funds, you advised Mr Counsel that the bullions would arrive in three separate parcels the following day. However, the parcels would never arrive, as they were seized by Police the following day when Police searched your residence.

52 The conduct set out in paragraphs 24 to 37 above gives rise to **Charge 4** – obtaining a financial advantage by deception.

53 **Charge 3** is a charge of possessing identification information of Marizia Mohseni which was not your own identification information and in circumstances where you intended to use it to commit or facilitate the commission of an indictable offence. It is comprised of various personal cards belonging to Marizia Mohseni that was possessed by you to facilitate opening

false accounts that would hopefully prevent your criminal behaviour being detected.

54 There are also two related summary offences that have been transferred from the Magistrates' Court to this court for determination pursuant to s 145, and s 242 of the *Criminal Procedure Act 2009* (Vic). One of the offences is an offence of possessing property reasonably suspected as being the proceeds of crime and will be detailed below. The other summary offence is that you breached a condition of bail. You were granted bail when arrested for these offences. A condition of your bail was that you were not leave the State of Victoria. On 12 March 2020 you were arrested by police in Queensland after being involved in a motor vehicle accident. You were then extradited to Victoria and have remained in custody since that date.

55 **Initial arrest and interview**

56 On 28 July 2020, the Police executed a search warrant at your address of 3 Culliton Road, Camberwell. They were investigating the sale to Mr Budhiraja and Mr Nandala. The Police were not aware at that time of the sales to Mr Counsel. The Police arrested you and interviewed you. You predominantly gave 'no comment' answers, but you denied any involvement in the offending. You admitted to owning some of the bullions, and said that you bought the bullions at auction and did not know if they were real or not. You were bailed on this occasion.

57 In the execution of their search warrant, the Police discovered:

- Three sealed packages addressed to Mr Counsel, containing 32 counterfeit bullions;
- 128 counterfeit gold bullions;
- Various materials in connection with your offending, such as:

- log in details and passwords to the various bank accounts you used to receive payment for the counterfeit bullion;
- SIM card packs for the various mobile phone numbers used in the offending;
- a photocopy of the licence in the name of Zhiren Lang;
- a renewal form for the Montiroli licence with your handwriting on it indicating you had paid for a 3 year renewal from November 2018; and
- additional documentation in the names of identities used in the offending (or variations of those names).

58 The Police seized your personal iPhone, and extracted data that included conversations on WhatsApp and similar applications in which you attempted to source counterfeit bullions of various brands. The data included communication between you and Montirioli in Italy in November 2018, where you were expressing enthusiasm about having advertised 'two' on eBay and that people had gone 'crazy'. You appeared to receive a message suggesting that police could become involved and you responded, "OK , all is good. It's not my account lol."

59 Also on your phone were numerous photographs of identification documents belonging to multiple persons. There were several messages where you were communicating with young women along with screenshots of bank transfers indicating you had deposited thousands of dollars into accounts belonging to these young women.

60 The Police seized two bundles of $50 notes that in total amounted to $38,000.00 cash.

61 The Police also seized 18 mobile phones and six laptops which did not appear to be used for legitimate purposes. The possession of these items constitutes the transferred, related summary offence of 'Deal With Property Reasonably Suspected as Being the Proceeds Of Crime'.

62 **Subsequent arrest and interview**

63 Mr Counsel became concerned when his order for 1 kg of gold was not delivered, and he was unable to contact the supplier. Counsel took the bullions to a jeweller to determine their authenticity. He was told that they were fake. Mr Counsel contacted the Police.

64 On 17 September 2020, the Police executed a further search warrant on your Camberwell address in relation to Mr Counsel's complaint. You were again arrested and interviewed. In your interview, you concocted an elaborate story about Montiroli and 'Mario' being responsible for the offending. You claimed that you had no knowledge of, or involvement in, the offending.

65 The Police seized further 29 counterfeit gold bullion and some genuine silver bars. $3,000.00 in cash was seized along with further electronic items such as a laptop and mobile phones.

66 On 18 August 2020, Mr Counsel received a refund of $5,433.00 from Paypal. This was the only transaction that you did not reverse prior to requesting payment via bank transfer.

67 On 16 October 2020, Police executed a search warrant on Credit Union Australia which led to Credit Union Australia freezing the account in which Mr Counsel's $73,600.00 was deposited. This money was returned to Mr Counsel. It is agreed between the parties and I refer below to the fact that there will be orders for compensation that will result in the $41,000.00 cash seized by police at your premises being returned to the victims.

68 **Impact on the victims**

69 There was a significant amount of money obtained in this case by deceiving the victims, specifically $6,020.00 from Mr Budhiraja and Mr Nandala, and $123,934.40 from Mr Counsel. Fortunately, the authorities have been able to recover most of this money. Some of the money has already been returned and defence counsel has pointed to the fact that once Orders for Compensation made by this court are executed in relation to the remaining recovered funds, the total outstanding loss will be $9,921.40.

70 The Prosecution do not dispute this assertion but point to the fact that for a considerable period of time the victims did not have available to them their own money and of course there would have been great anxiety for a time as to whether they would recover any of the funds.

71 The impact upon Mr Phillip Counsel is detailed in a Victim Impact Statement he has made. He is a resident of Mallacoota where unfortunately he was impacted by severe bushfires that happened in that locality in the summer of 2020. He described how he was already 'extremely fragile and vulnerable after the fires'. He stated that he felt, 'further traumatised after already being traumatised by the fires'. The trickery perpetuated upon him by this offending has caused him to lose confidence in his own ability to make decisions and caused him a deep sense of betrayal. He says he is now second guessing everything he does and he has lost trust in humanity when he was relying on people to assist in rebuilding his life. He describes how the psychological impact and stress has affected him physically in coping with a number of medical conditions. I have read his statement carefully and have no doubt your commission of this crime has had a significant impact upon him.

72 **Personal history**

73 You were born and raised in Cyprus and are the eldest of seven children. Your mother worked as a cleaner and your father worked in construction and mining and spent considerable time working in Papua New Guinea and in Coober Pedy, Australia.

74 You left primary school at about 10 years of age to commence employment so as to help the family with finances. You worked for builders and also on a farm.

75 In 1973, when you were about 16, your family moved to Australia to reunite with your father who was still working in the opal mines. When you arrived in Australia you didn't speak English and were bullied at places of employment. Your counsel stated on your behalf that your father was abusive and beat you and your mother and that there was often domestic disputes in front of you and your siblings.

76 In 1975 your family moved to Brisbane but your father remained in the opal mines. You commenced work in a glass factory in Brisbane and again helped to financially support the family.

77 Your father passed away in 2010 but your mother is still alive living in Brisbane.

78 From 20 to 27 years of age, you worked in construction with your uncle in Papua New Guinea. You also married in that period and had five children from that marriage.

79 In 1997 when you would have been aged around 40 years of age, your marriage broke down and your wife moved to Cyprus. You were left as a single parent with the care of five children, and it has been put on your behalf that you worked hard in providing for your family in this time.

80 I am told by your counsel that in 2017 you met a woman named Anna Svystun through an online dating website. She joined you in Australia, however the relationship broke down after a time and she has returned to the Ukraine.

81 I have been told by your counsel that you remain close to your children and grandchildren, although you did not inform them of your current offending until you were remanded in custody.

82 You have been in receipt of a disability support pension for the last four years

83 **Prior Criminal History**

84 You first court appearance was at the age of 23. You appeared before the Sandgate Magistrates' Court in Queensland in 1980 and were convicted and fined $75.00 on that occasion for a charge of false pretences. Then in 1990, when you were in your early 30s, you appeared before the Brisbane District Court on 7 charges of Passing Valueless Cheques. An order for restitution in the amount of $8,194.00 was made and you were placed on probation for three years. In 1993 that probation period was extended by the District Court for a further 18 months due to a breach of the original Order.

85 In 1997 when you were aged 40 you again appeared in the District Court in Brisbane on charges of defrauding the Commonwealth of $30,551.00. You were convicted and sentenced to 21 months' imprisonment to be released upon entering a Recognisance Release Order, after having served four months of that sentence.

86 There is then a gap in your recorded criminal history between 1997 and the next recorded conviction on 21 November 2014. However, the record does not capture the fact that in 2003 you were charged with further offences in Victoria and absconded on bail so that these Victorian offences were not finalised until 2016. I refer to those matters below.

87 On 21 November 2014, you were before the District Court in Brisbane for a variety of offences, including Dishonestly Obtaining Property By Deception amounting to $170,381.00 from Westpac Banking Corporation. A head sentence of 6 years' imprisonment was imposed with you being eligible for parole after 2 years. You had already served 554 days of pre-sentence detention, with the result that you were eligible for parole on 16 May 2015.

88 On 16 May 2015, you were extradited to Victoria to be dealt with for the 2003 offending. You were dealt with by His Honour Judge Taft in this Court on 22 February 2016.

89 I have been provided with the Reasons for Sentence delivered by Judge Taft.[2] On that occasion you were dealt with in respect of one count of obtaining $391,500.00 by deception over a six-month period between April and October 2003, a second count of theft of $49,550.00 during the same period and a further count of attempting to obtain a financial advantage between July and October 2003. The victim on all three counts was the Commonwealth Bank of Australia and you also pleaded guilty to the transferred summary charge of Fail to Answer Bail in 2004.

90 Although, the offending before Judge Taft involved others participating in the fraud, you were sentenced on the basis that you played a significant role. The offending is similar to the offending before me in that it involved the creation and use of numerous false identities and documentation in what was a sophisticated deception.

91 Judge Taft, had to sentence you taking into account the time that you had already served under the sentence imposed in Queensland. Applying the principle of totality, he sentenced you to a total effective sentence of three years and two months' imprisonment with an order that you serve 19 months before being eligible for parole. He declared that 340 days of that sentence

[2] *DPP* v *Andreou- Luca* [2016] VCC 195.

had already been served. Your defence counsel, Ms Austin, has tendered on the plea a letter from the Parole Board that states that you were granted parole in relation to that sentence on 17 October 2016 and that you completed your parole successfully so that the sentence lapsed on 16 May 2018.[3]

92 **Matters in mitigation**

93 Ms Austin who appeared on your behalf, highlighted a number of matters to be given weight in mitigation.

94 The parties agree that you indicated an intention to plead guilty at an early stage and as a result your charges were resolved before the committal on 25 June 2021. The Prosecution also does not dispute the defence submission that your plea of guilty is of greater utilitarian benefit given the current situation with the COVID-19 pandemic, and the consequent backlog of cases in this Court.[4] I find that your plea of guilty is consistent with some remorse.

95 It is apparent from the prosecution opening, that the $73,600.00 that Mr Counsel paid into the Montiroli account was frozen by authorities once the fraud was detected and was fortunately able to be refunded. Ms Austin submitted that you gave instructions at an early point in time that the $41,000.00 cash found in your possession should be returned to the victims. I was informed during the plea that procedurally that would only occur after the sentence was imposed and formal orders for compensation had been made. I accept that your early instructions that the money should be returned is consistent with some level of remorse. However in my view, this is tempered by the reality that you had no legitimate way of accounting for this money, and it was always likely to be the subject of a Court order for compensation.

[3] Exhibit 7 on the Plea.
[4] *Worboyes* v *The Queen* [2021] VSCA 169, [35].

96 However, I accept the submission by the Defence that it is a significant fact in mitigation, that at the end of the day, the bulk of the money has been able to be refunded to the victims and that the outstanding loss to the victims is approximately $9,921.00.

97 Ms Austin has submitted that primary sentencing considerations include your age and health. You are now 64 years old. Numerous medical reports, clinical notes and letters, have been tendered on your behalf that testify to your extremely poor health.[5] I have carefully considered this material. Since the commission of these offences, you suffered a stroke in February 2021. You are wheelchair bound with left side hemiplegia. You also suffer from:

- Emphysema;
- Asthma;
- Severe chronic obstructive pulmonary disease (COPD);
- Coronary artery disease;
- Anxiety;
- Thalassemia;
- Diverticulitis;
- Eczema;
- Numbness on your left side;
- Spinal disc degeneration;
- Hypertension; and,
- Severe ischemic heart disease (IHD).

98 You had four cardiac stents inserted in 2019 and you still have ongoing chest pain and difficulty breathing. You are on numerous medications to deal with this pain, and have required the assistance of another prisoner in your unit to act effectively as a carer for you and help you with daily tasks. A document tendered on your behalf headed 'Clinical Nurse In Prison Assessment' regarding an assessment of you in prison on 6 July 2021, details your many ailments.[6] It also records that you have a fear of dying in prison. Given your

[5] Exhibits 2-6 inclusive on the Plea.
[6] Exhibit 2 on the Plea.

current medical conditions I don't regard that concern as being without some foundation.

99 I accept the defence submission that the medical conditions you suffer from make imprisonment a greater burden for you than would be the case for a person who was not suffering from these conditions.[7] I will accordingly take account of your poor health in mitigation of the sentence that I will impose in respect of these offences.

100 Your defence counsel tendered a letter from your daughter and a letter from a family friend.[8] Your daughter's letter indicated that despite your history of offending your family is close and supportive. Your daughter's letter states, ' We are willing to support my father in every way, financially, emotionally, and with accommodation, once he is out of custody and permitted to be in Brisbane. We understand that this may take some time.'

101 **Objective Seriousness Of The Offending And Application Of Relevant Sentencing Principles**

102 The Defence submitted that there was an overlap in the period of what was similar offending in respect of different victims and that I must have regard to the principle of totality in constructing a sentence that reflects the overall offending. I agree with that submission. The Prosecutor also fairly made the concession during the plea that the possession of the identification information the subject of Charge 3 was material used to facilitate the offending the subject of Charges 1 and 2, and that it was proper to impose a sentence that might be served concurrently with the sentences imposed on those charges.

103 Mr Louca, the offending you have committed is most troubling in terms of the audacious manner in which you went about devising false documentation, and opening false bank accounts and false eBay accounts, in order to fool victims

[7] *DPP* v *Devey* (No 2) [2021] VSC 121, [52]; *R* v *Van Boxtel* (2005) 11 VR 258.
[8] Exhibits 8 and 9 on the Plea.

into believing that you were selling genuine gold bullion, without those sales being traced back to you.

104 I must be mindful not to punish you for your prior offending. However, your prior criminal history involves repeated instances of this type of conduct. It is relevant in assessing your moral culpability, and bears on the weight to be given to sentencing considerations of specific deterrence and community protection. Judge Taft, wisely, observed in 2016, that little weight could be placed on an assertion, at that time, that you had reasonable prospects of rehabilitation. It can only be hoped that as you progress into old age, with the unfortunate severe health problems that you suffer that you will decide to desist from this type of conduct. Although your health situation has worsened since you committed these offences I note you were suffering from many of these debilitating health issues at the time of your offending. Indeed Judge Taft, stated when sentencing you in 2016, 'That you should have engaged in serious offending in Queensland after being treated for major health conditions is surprising.' Section 5(2)(d) of the *Sentencing Act 1991* (Vic), states that I must have regard in sentencing you, to your culpability and degree of responsibility for the offence. Despite your age and ill health, I assess your moral culpability as high.

105 Your counsel has submitted that you 'successfully completed' your last period of parole, 'which lapsed on 16 May 2018'.[9] Whilst you may have completed your parole, I note that Charge 3 involves you possessing false identity information from a date commencing on 30 April 2018. When arrested examination of your phone messages revealed you were exploring the idea of selling fake gold in November 2018, only 4 months after your previous parole had lapsed. I find that there is an aspect of the sentence that I impose that must be intended to specifically deter you.

[9] Exhibit 1 on the Plea (Defence Outline of Submissions) at [44.b].

106 I should also state that your counsel did not advance the submission that your offending was motivated by strained financial circumstances. That may have been a difficult submission to advance given most of the money had not been spent when you were arrested and an examination of your phone revealed, what was uncontradicted evidence, that you had 'deposited thousands of dollars into the accounts of young women'.

107 This type of offending needs to be publicly denounced. There are aspects of it that undermine the banking system. False accounts have been created and used to disguise the receipt of fraudulently obtained money. It is important to generally deter others who might offend by using the anonymity of the internet to construct methods by which people can be deceived into parting with their money.

108 I have had regard to current sentencing practices by examining case summaries in the Judicial College Sentencing Manual relating to dishonesty offences generally. I bear in mind that each case has its own particular circumstances and other cases are not to be regarded as precedents.

109 I must be mindful that in imposing sentence, I have to balance the competing sentencing considerations in this case and have regard to the principle of totality. I must avoid a sentence that is crushing upon you and I must impose a sentence which expresses the denunciation by the court of the serious criminal conduct involved in this offending and that is just in all the circumstances balancing all of the above considerations.

Sentence

110 Loucas Louca, having carefully considered all the matters in this case and weighed the various sentencing considerations, I sentence you as follows:

111 On Charge 1 of Dishonestly Obtaining A Financial Advantage By Deception you are convicted and sentenced to 12 months imprisonment.

112 On Charge 2 of Attempting To Obtain A Financial Advantage By Deception you are convicted and sentenced to 6 months imprisonment.

113 On Charge 3 of Possessing Identification Information Which Was Not Your Own Identification Information And Which Was Intended To Be Used To Commit An Indictable Offence you are convicted and sentenced to 3 months imprisonment.

114 On Charge 4 of Obtaining A Financial Advantage By Deception you are convicted and sentenced to 22 months imprisonment and I direct that this be the base sentence.

115 On the related summary offence of Contravening A Condition Of Bail you are convicted and sentenced to 2 months imprisonment

116 On the related summary offence of Deal With Property Suspected Of Being Proceeds Of Crime you are convicted and sentenced to 6 months imprisonment.

117 I order that 2 months of the sentence on Charge 1 be cumulative upon Charge 4 and all other sentences imposed this day.

118 I order that 1 month on the sentence of Charge 2 be cumulative on Charge 4 and all other sentences imposed this day

119 I order that 1 month on the summary offence of contravening a bail condition be cumulative upon Charge 4 and all other sentences imposed this day.

120 I order than 1 month on the related summary offence of Deal in Property Suspected Of Being Proceeds Of Crime be cumulative upon Charge 4 and all other sentences imposed this day.

121 That makes a total effective sentence of 2 years and 3 months' imprisonment. I direct that you serve 17 months before being eligible for parole.

122 I am about to make a declaration in relation to the days already served. Can I just confirm with counsel that it is 217 days?

123 COUNSEL: Correct, Your Honour.

124 HIS HONOUR: I declare pursuant to s 18(4) of the *Sentencing Act 1991* (Vic) that the period of 217 days be reckoned as time already served under the sentence imposed today.

125 Pursuant to s 6AAA of the *Sentencing Act 1991* (Vic) I indicate that had you not pleaded guilty to the offences I would have sentenced you to a Total Effective Sentence of 34 months imprisonment and ordered that you serve 2 years before being eligible for parole.

126 I order that pursuant to s 33(1) of the *Confiscation Act 1997* (Vic) that the 41 items (excluding items 17, 19, and 37) listed in the Schedule to the Crown's application for forfeiture be forfeited to the Minister.

127 As a result of being convicted of the offences of Obtaining Financial Advantage by Deception, and satisfaction by me that the following persons have suffered a loss of property, I order pursuant to s 86 of the *Sentencing Act 1991* (Vic), compensation in the following terms:

> That Loucas LOUCA pay:
> To Priyank BUDHIRAJA , the amount of $3,420.00.
> To Venkata NANDALA the amount of $2,600.00.
> To Philip COUNSEL the amount of $44,901.40.

128 Can I confirm with counsel that they have been able to adequately record the sentences that I have imposed and that there are no further orders that I need to make in relation to this matter?

129 MR ALBERT: Yes, Your Honour.

130 HIS HONOUR: Thank you. Mr Louca, I hope that when you are released from this sentence you are able to receive the support of your family and change the course of your life and never offend again. I hope you understand

the total effective sentence that has been imposed upon you. I will allow your defence counsel to have a period of time when we turn off the link so that she can go through the sentence with you and explain it to you in detail. I will now adjourn the court.

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